**Question: Critically discuss the power of judicial review of the Supreme Court of India.**

**Answer:**

**Meaning**

The Constitution of India is the supreme law of the land. The Supreme Court of India has the supreme responsibility of interpreting and protecting it. It also acts as the guardian-protector of the Fundamental Rights of the people. For this purpose, the Supreme Court exercises the power of determining the constitutional validity of all laws. It has the power to reject any law or any of its part which is found to be un­constitutional. This power of the Supreme Court is called the Judicial Review power. State High Courts also exercise this power but their judgments can be rejected or modified or upheld by the Supreme Court.

**Features**

1. **Judicial Review Power is used by both the Supreme Court and High Courts:** Both the Supreme Court and High Courts exercise the power of Judicial Review. But the final power to determine the constitutional validity of any law is in the hands of the Supreme Court of India.
2. **Judicial Review of both Central and State Laws:** Judicial Review can be conducted in respect of all Central and State laws, the orders and ordinances of the executives and constitutional amendments.
3. **Limitations:** Judicial Review cannot be conducted in respect of the laws incorporated in the 9th Schedule of the Constitution. The 9th Schedulde of the Constitution contains a list of centarl and state laws which cannot b challhenged in the courtys. Currently, 284 such laws are shield from the judicial review.
4. **It covers laws and not political issues:** Judicial Review applies only to the questions of law. It cannot be exercised in respect of political issues.
5. **Judicial Review is not automatic:** The Supreme Court does not use the power of judicial review of its own. It can use it only when any law or rule is specifically challenged before it or when during the course of hearing a case the validity of any law is challenged before it.
6. **Judicial Review Decision gets implemented from the date of Judgment**: When a law gets rejected as unconstitutional it ceases to operate from the date of the judgment. All activities performed on the basis of the law before the date of the judgment declaring it invalid, continue to remain valid.
7. **Principle of Procedure established by Law:** Judicial Review in India is governed by the principle of ‘Procedure Established by Law’. Under it the court conducts one test, i.e., whether the law has been made in accordance with the powers granted by the Constitution to the law-making body and follows the prescribed procedure or not. It gets rejected when it is held to be violating of procedure established by law.

**Criticism**:

1. **Undemocratic:** The critics describe Judicial Review as an undemocratic system. It empowers the court to decide the fate of the laws passed by the legislature, which represent the sovereign, will of the people.
2. **Lack of Clarity:** The Constitution of India does not clearly describe the system of Judicial Review. It rests upon the basis of several articles of the Constitution.
3. **Reactionary:** Several critics regard the Judicial Review system as a reactionary system. They hold that while determining the constitutional validity of a law, the Supreme Court often adopts a legalistic and conservative approach. It can reject progressive laws enacted by the legislature.
4. **Delaying System:** Judicial Review is a source of delay and inefficiency. The people in general and the law-enforcing agencies in particular sometimes decide to go slow or keep their fingers crossed in respect of the implementation of a law. They prefer to wait and let the Supreme Court first decide its constitutional validity
5. **Fear of Judicial Tyranny:** A bench (3 or 5 or 9 judges) of the Supreme Court hears a judicial review case. It gives a decision by a simple majority. Very often, the fate of a law is determined by the majority of a single judge. In this way a single judge’s reasoning can determine the fate of a law which had been passed by a majority of the elected representatives of the sovereign people.
6. **Reversal of its own decisions by the Supreme Court:** It is on record that on several occasions the Supreme Court reversed its earlier decisions. The judgment in the Golaknath case reversed the earlier judgments and the judgment in the Keshwananda Bharati case reversed the judgment in the Golaknath case. The same enactment was held valid, then invalid and then again valid.

**Arguments in Support of Judicial Review:**

A very large number of the supporters of Judicial Review do not accept the arguments of the critics. They argue that Judicial Review is an essential and very useful system for Indian liberal democratic and federal system. It has been playing an important and desired role in the protection and development of the Constitution.

1. Judicial Review is essential for maintaining the supremacy of the Constitution.
2. It is essential for checking the possible misuse of power by the legislature and executive.
3. Judicial Review is a device for protecting the rights of the people.
4. No one can deny the importance of judiciary as an umpire, or as an arbiter between the centre and states for maintaining the federal balance.
5. The grant of Judicial Review power to the judiciary is also essential for strengthening the position of judiciary. It is also essential for securing the independence of judiciary.

**Conclusion**

Though some critics’ have pointed out some criticism against the judicial review of Indian Judicial system yet it should be remembered that country like India judicial review power has great significance. In India the confidence of the people from the legislature and executive has been declining gradually. Therefore, it is the Supreme Court of India which has been giving proper justice to the people. For this reason the application of judicial power is most essential.